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Supreme Court, U.S.
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IN THE

Supreme Court of the United States

JAMES TYGART .....APPELLANT

vs. No. 311, October Term, 1970

STATE OF ARKANSAS .....APPELLEE

RESPONSE TO MOTION TO DISMISS APPEAL

APPEAL FROM ARKANSAS SUPREME COURT

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1. It is respectfully submitted that under the 4th Amendment to the Constitution of the United States, a written affidavit is required before a search warrant may be issued and that the search warrant must be based on such written affidavit made under oath or affirmation.

This question has not heretofore been decided by the Supreme Court of the United States as far as our research has revealed. The only case book law which we have uncovered in research is the rule stated in **79 C.J.S. 855, Sec. 73:**

> "A valid search warrant may issue only upon an application therefor under oath or affirmation in the form of a complaint or affidavit sufficient in form and substance to support the warrant."

Under Amendment 14 to the Constitution of the United States, Amendment 4 applies to the States. This question is therefore important to the due administration of criminal law and the question of due process.

2. In this case the defendant timely raised the questions of violations of Amendment 4 to the Constitution of the United States and Amendment 14 to the Constitution of the United States in regard to the search of the motor vehicle without a search warrant. The officers under testimony had been informed that the defendant would be returning from Mexico with a quantity of illegal drugs and that he would be driving a 1960 red and white Rambler. Subsequently, and later, the officers stopped this 1960 red and white Rambler. The appellee states that the defendant did not challenge the search on the grounds that it would have been practicable for the officers to obtain a search warrant. It is respectfully submitted that when the question of the violation of the Constitution was raised in the trial court and in the Supreme Court that this raised on the questions inherent under the Constitution. The burden was on the State to prove that it was not practicable to obtain a search warrant. Under the facts in this case, the officers having prior knowledge of the defendant driving a particular car, it was on its face practicable for the officers to obtain a search warrant for this particular car. We respectfully submit and repeat that this question was raised when the question of the violation of the constitutional guaranty against unreasonable searches and seizures was raised in the trial court and that said search was in violation of Carroll v. United States, 367 U.S. 132.

Respectfully submitted,

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